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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/620,953	07/21/2000	Peter A. Graef	WEYC115634	4023

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/18/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/620,953

Applicant(s)

GRAEF ET AL.

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-23, 41-50 and 60-67 is/are allowed.
- 6) ☒ Claim(s) 1-15, 24-40 and 51-59 is/are rejected.
- 7) ☒ Claim(s) 24 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Applicant's amendment of 2-5-02 has been entered. The examiner will address applicant's remarks at the end of this office action.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 24,25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 24,25, what is meant by "the second"? The second what? The examiner feels that the word "stratum" needs to be added to this phrase to make it clear that it is the second stratum that is being referred to here.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,2,4-7,9-12,14,15,26,27,29-32,34-37,39,40, are rejected under 35 U.S.C. 102(b) as being anticipated by Young Sr. et al. (5188624).

With respect to claims 1,2,4,5,6,7,9,10,11,12,14,15,26,27,29,30,31,32,34,35, 36,37,39,40, Young discloses a 1<sup>st</sup> stratum 14 and a 2<sup>nd</sup> stratum 16. The 1<sup>st</sup> stratum is made from hydrophobic fibers and a binder. See columns 6, lines 49-53 and column 5, lines 40-58. The 2<sup>nd</sup> stratum is made from the claimed fibers and a binder. See column 7, lines 24-28, column 8, lines 3-9 and column 7, lines 30-32. With respect to the

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entanglement of the fibers at the interface of the stratum see column 3, lines 54-57 and column 7, lines 12-16. The composite of Young is unitary because it forms a unit.

With respect to claim 6, in addition to what is discussed in the preceding paragraph, Young discloses a topsheet 12 and a backsheet 18.

With respect to claims 11,36, Young discloses a storage stratum 20 that is fibrous and is capable of storing fluid.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 3,8,13,28,33,38,51-59, are rejected under 35 U.S.C. 103(a) as being unpatentable over Young Sr. et al. (5188624) in view of Graef et al. (5225047).

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Young discloses the invention substantially as claimed. See the above 102 rejection.

Young discloses that the 2<sup>nd</sup> stratum is desirably made from wood pulp fibers (cellulose fibers). Young does not disclose the cellulose fibers as being crosslinked cellulose fibers. Graef discloses that crosslinked cellulose fibers have advantages in disposable absorbent articles such as diapers when compared to normal untreated cellulose fibers. Graef discloses that crosslinked cellulose fibers provide greater bulk and will hold retained liquid better under compressive forces encountered during use of the article. Crosslinked cellulose fibers will provide an improvement in performance when compared to untreated cellulose fibers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Young with crosslinked cellulose fibers for the 2<sup>nd</sup> stratum as disclosed by Graef so that increased bulk and improved retention of fluid under compressive forces may be obtained. Using crosslinked cellulose fibers in the 2<sup>nd</sup> stratum of Young will provide an improvement over the untreated cellulose fibers that Young discloses.

***Double Patenting***

8. Claims 1,3,26,27,28,29,51,52, are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1,25,62,63,65-67,69, of copending Application No. 09/137,503. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

9. Claims 16-23,41-50,60-67 are allowed.

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10. Claims 24,25, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Applicant's arguments filed 2-5-02 have been fully considered but they are not persuasive.

With respect to the traversal of the 102(b) Young reference, applicant has based patentability on the limitation of "unitary". Unitary is defined as "of or relating to a unit", or "having the character of a unit". The argument is non-persuasive because Young does in fact disclose a unitary article. The composite of Young is unitary as it forms a unit. Unitary does not mean that the composite has to be made by the method argued by applicant. The composite of Young is unitary in the sense that the strata are connected through a transition zone, just as is claimed in the instant pending claims. Applicant has effectively argued that the method of making the article is novel; however, the instant pending claims are article claims, not method claims. Since this is the only argument for patentability the rejection will be maintained and is deemed proper. With respect to the 103 rejection there is no further argument other than the "unitary" argument so this rejection is also maintained. There is no argument addressing the merits of the 103 rejection, only the base reference has been argued not the combination. With respect to the statutory 101 double patenting rejection the argument is non persuasive. The pending claims of 09/137503 recite a unitary article even if the word unitary is not in the claims. The claim language concerning the transition zone will inherently result in a unitary article. Amending the claims to recite "unitary" will not moot

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the statutory double patenting rejection as the claims at issue are still of the same scope as the claims in 09/137503. The term "unitary" does not change the scope of the claims from that pending in 09/137503. One set of claims cannot be infringed without also infringing the other set of claims. Applicant is also reminded that a statutory 35 USC 101 double patenting rejection cannot be overcome by a terminal disclaimer.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR  
April 9, 2002

A handwritten signature in black ink, appearing to read 'Dennis Ruhl', with a stylized, flowing script.

**DENNIS RUHL**  
**PRIMARY EXAMINER**